WRITTEN TESTIMONY OF
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ENVIRONMENTAL AND SAFETY
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BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

Introduction

Good afternoon, my name is Jeff Melby and I am Vice President, Environmental and Safety for Genmar Holdings, Inc. Genmar Holdings owns several boat manufacturers, including Carver Yachts; Stratos & Ranger Bass Boats; Wellcraft; Larson; Glastron Boats; and Four Winns, which is located in Cadillac, Michigan and boasts a workforce of over 500 employees. I am here today on behalf of my company as well as the National Marine Manufacturers Association (NMMA), which represents 450 of my fellow recreational boat builders. I have two specific messages to convey to Members of this committee. First, recreational boat manufacturers need this committee to direct OSHA to update the Spray Finishing Using Flammable and Combustible Materials Standards[1], which I will refer to as the OSHA fire safety standard. This rule has burdened my company and many others with unnecessary complication. Second, we wish to commend the Federal Motor Carrier Safety Administration which is moving to correct its outdated surge brake rule.[2]

In May 2004, NMMA responded to the Office of Management and Budget's (OMB) request for regulations that are unduly burdensome or that need reform.[3] NMMA nominated the outdated OSHA fire safety standards because they still are based upon the 1969 standards set by the National Fire Protection Association (NFPA), rather than the 2003 NFPA standards. The 2003 NFPA standards are designed specifically for the recreational boat building and composites industries, and are based on updated information and know-how. NFPA is the nation's standard-bearer for fire protection standards because it is comprised of the nation's leading insurers as well as the fire-fighting community. NMMA also nominated the outdated Federal Motor Carrier Safety Administration (FMCSA) rules prohibiting the use of surge brakes on trailers used for commercial purposes.

Federal Motor Carrier Safety Administration's Surge Brake Rule

[1] 29 C.F.R. § 1910.107.
[2] 49 C.F.R. § 393.49.
[3] *See* Draft Report to Congress on the Costs and Benefits of Federal Regulations, 69 Fed. Reg. 7,987 (Feb. 20, 2004) and full draft report at http://www.whithouse.gov/omb/inforeg/regpol-reports_congress.html.

Today, FMCSA regulations allow surge brakes on trailers towed by consumers. However, the same trailer towed by a professional driver is required to be equipped with more expensive electronic brake systems. Almost three years ago, the national Surge Brake Coalition submitted all safety and technical data requested by FMCSA. And despite assurances to the contrary, the agency took no action for more than two years to remove this expensive and wasteful requirement that caused marine dealers to be ticketed while hauling boats to boat shows or delivering boats to consumers.

The committee should note that the situation has changed significantly in recent months. FMCSA, and particularly Luke Loy, Engineer, Vehicle and Roadside Operation Division, have been quite diligent in moving the regulatory change ahead. We understand our request for regulatory relief has been reviewed by all necessary staff and is in the Office of Secretary Norman Mineta for final approval. Even though the wheels of government can move slowly, we are pleased to report that, in the case of our surge brake concerns, the issue is being addressed and we hope to have resolution in the near future.

Occupational Health and Safety Administration's Fire Safety Standards

The OSHA fire safety standards have not been updated since they were adopted in the early 1970's, even though fire-suppression technology has progressed dramatically. OSHA has even acknowledged that these standards need to be reviewed and updated, but continues to do nothing about it.

Specifically, the issue has to do with the level of fire protection necessary for operating a boat manufacturing plant. Back in the early 1990's, NMMA and the American Composite Manufacturers Association approached OSHA and asked that the fire safety standards be updated. Based on these discussions with OSHA, we were directed to contact NFPA to have them evaluate spray operations at boat manufacturing plants and determine if the hazards from these operations warranted a change to the safety standards. Subsequently, NFPA revised its standards in 1996 by creating a separate chapter to address the specific hazards and requirements with regard to applying flammable resin in the manufacture of recreational boats and other fiberglass composite products.[4] The resin used to make fiberglass is regulated under the OSHA fire safety standards because styrene, which is present in the resin, is considered a Class I flammable liquid. NFPA created this separate chapter based on extensive testing that included measuring the level of concentration of flammable vapor in a spray-booth and several years of evaluation within the NFPA 33-34 Spray Finishing Committee.

We then returned to OSHA in the late 1990's requesting that they update their 1910.107 standards. In fact, OSHA included this change in 1999 in its update to the unified agenda[5], but rescinded the effort in 2001, citing "resource constraints and other

[4] NFPA 33 (2003 Edition).
[5] Unified Agenda, Proposed Rule Stage 1218-AB84 – 2149. Spray Applications. http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=UNIFIED_AGENDA&p_id=4116.

priorities."[6] Prior to the rescission, however, OSHA called this rule "one of OSHA's most complex and out-of-date rules." Yet even with this acknowledgement, OSHA has been unable to correct it.

Extensive Testing of Fire Safety With Respect to Recreational Boat Building

When we first started working with NFPA, we needed to do some testing to determine what concentration of sprayed resin could cause a fire. And based on that, we could determine what level of fire protection would be necessary to protect the workers as well as the business operations. One of the tests that performed was to operate a spray-gun in an enclosed booth with no ventilation for 15 minutes. After 15 minutes, the concentration of flammable styrene-vapor in the booth was 690 parts per million (ppm). To put that into perspective, the lower flammable limit for styrene-vapor is 11,000 ppm. The reason why this type of material acts this way is because most of the styrene, which usually totals about 30 % of the resin mixture, does not volatilize and remains with the resin as it is applied and cures to make fiberglass. In fact, the NFPA tests revealed that the resin "does not readily ignite and burns slowly when it does ignite."[7] When OSHA wrote these rules back in the 70's they actually examined flammable solvents found in paints and other coatings such as toluene and xylene, which are extremely volatile and flammable.

The Nature of the Problem with the Current OSHA Fire Safety Standards

The main problem is that many state OSHA agencies and local fire departments refer to the federal OSHA standards when enforcing local fire code or worker safety regulations. There have been countless cases in our industry, including two of our Genmar plants, where a state OSHA office cited us for not complying with the 1910.107 standards even though the plants were in compliance with the updated NFPA fire safety standards. After expending a great deal of time and resources, including attorney's fees, we were able to convince one of the state OSHA offices to withdraw the violation. The other state OSHA office refused to withdraw the citation, but did agree to a compromise which did not increase our operational costs to the extent that full compliance with 1910.107 would require. The expended costs and continuing operational costs do not create a safer working environment.

Conclusion

There are four points that I want you to take away from my testimony:

[6] Unified Agenda, Completed Actions 1218-AB84 – 2134. Update and Revision of the Spray Applications Standard. http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=UNIFIED_AGENDA&p_id=5061.
[7] *See* NFPA 33 (2003 Edition) Chapter 17, Annex A, Explanatory Material at A.17.3(1).

- First, in writing its regulation, OSHA originally adopted the 1969 NFPA fire safety standards and OSHA has not updated them since then, even though NFPA has revised the standard to reflect new technologies and knowledge.
- Second, OSHA has acknowledged that their standard is out-of-date and actually written letters to other industry manufacturers stating that if a facility is not in compliance with the OSHA fire safety standards, but is in compliance with the NFPA 33 standards, OSHA would consider this a De Minimis violation under the OSHA De Minimis policy.[8] Nonetheless, state OSHAs don't follow the federal OSHA De Minimis policy, which causes manufacturers problems.
- Third, we are pleased that FMCSA is moving forward to update its regulations to allow professional drivers to tow trailers equipped with surge brakes.
- Finally, as you probably hear from many company representatives who testify on regulatory issues, it is a great challenge and burden to manufacturers to comply with the complex regulations imposed on us today by local, state, and federal governments. When a regulatory agency has a rule on the books that *they* understand to be outdated, and we understand to be outdated, something needs to be done to fix it. That's why I am here today; to ask you to encourage OSHA to update its 29 CFR 1910.107 regulation to reflect the NFPA 33 Chapter 17 consensus standard.

[8] *See* OSHA's De Minimis policy, OSHA Instruction 2.103, September 26, 1994, Field Instruction Reference Manual, Chapter III – 19 and 20.